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An Important Case to Medical Men.



In the King's Bench.

FAIRCHILD vs. GRABHAM.

MINUTES OF THE TRIAL OF THIS CAUSE FOR Defamation,

At Chelmsford Summer Assizes 1819, before Mr. Baron Garrow
and a Special Jury.

Who steals my purse, steals trash ; 'tis something, nothing ;
'Twas mine, 'tis his, and has been slave to thousands ;
But he that filches from me my good name,
Robs me of that, which not enriches him,
And makes me poor indeed.

SHAKESPEARE.

COUNSEL

For the Plaintiff
MR. GURNEY
MR. CHITTY
Attorney
MR. BULLEN of Southend,
Essex.

For the Defendant
MR. MARRYATT
MR. SERJEANT TADDY
MR. BOWEN
Attornies
MESSRS. VANDERZEE AND
COMFORT, Rochford, Essex.

**Taken in Short Hand
By JOSEPH A. DOWLING,
NO. 8, BELL'S BUILDINGS, SALISBURY SQUARE.**

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FAIRCHILD v. GRABHAM.



Mr. Chitty opened the Pleadings for the Plaintiff, and Mr. Gurney stated the Case to the Jury in the following manner :

May it please your Lordship,

GENTLEMEN OF THE JURY,

I HAVE now to call your attention to a case, which I confess interests me in a greater degree than I ever experienced in any case. I have to open to you the case of a gentleman of the medical profession, who is compelled to come here to ask you for a compensation in damages, for the most grievous injury which any man can possibly inflict upon him; and which, unless it be compensated by your verdict, and unless the malice which has prompted that injury be repressed, it might lead to the utter destruction of my client.

Gentlemen, there are no actions which differ more from one another, than actions of slander; there are but too many of those actions, which dis-

grace those who bring them, and which are brought perhaps for words uttered in haste, in passion, or inadvertance, and where no injury has been sustained, or where perhaps the words have been provoked by the party, who afterwards seeks for a compensation in damages ; but this case will not fall under any of those descriptions, for the plaintiff who asks for a compensation for the injury he has sustained, has given no provocation to the defendant, nor is the injury like that done by any other person ; for the defendant stands in a situation, which of all others, renders his conduct most inexcusable, and the injury most heinous. Mr. Fairchild resides at Rochford, and has been in a respectable and extensive practice there, as surgeon and apothecary, for many years. The defendant Mr. Grabham is also a surgeon and apothecary residing in that immediate neighbourhood. He is younger than Mr. Fairchild and has come more recently into that situation. He is also in a respectable practice, and has a character, which, except in the instance in question, I have no instructions from my client to impeach. But from his situation, from his being in the same profession, the defamation which is complained of, is, from the lips of Mr. Grabham, the more injurious and the more mischievous. Gentlemen, Mr. Fairchild had been called in to attend a female of the name of Newson, a married woman, who was

afflicted with a rupture, which had strangulated; and probably I need not explain to gentlemen of your experience and knowledge the nature of that complaint. but a rupture becomes strangulated when the intestine has come too far out, and when it will not recede; there then must be relief within a certain time, or death is the inevitable consequence. Mr. Fairchild endeavoured to reduce it but in vain. He first endeavoured to reduce the rupture—that is, to restore the part which had protruded to its proper place, but he found himself unable to do it. It was then his business to resort to those means which the science of surgery has discovered, as likely to assist the manual operation of reduction. The Warm Bath is recommended as producing relaxation. A cold application at other times may be successful; another remedy is an injection of tobacco in a certain manner, which produces a general relaxation, and enables the operator to reduce the rupture. There are, besides these, several internal means which are resorted to, and conceived to be efficacious in the opinions of the most eminent Surgeons; and all the means that were employed by Mr. Fairchild, are the means which are recommended by the most able, and the most distinguished Members of the Faculty. Mr. Fairchild, Gentlemen, apprised the husband that he must resort to these means, but unless they

succeeded, he told him no means could be resorted to but an operation. He said, "I hope I shall not have occasion to resort to it; but unless these means are effectual, an operation must be resorted to."—The means did not succeed.—He recommended the operation, but the repugnance of the poor woman was absolutely invincible. We know there are very many cases of that unhappy nature. I know some members of the faculty, who inform me they have had patients who would rather submit to death, than undergo a surgical operation, and with an absolute notification that that would be the inevitable consequence, they have continued peremptorily obstinate in refusing; and no exhortation of Mr. Fairchild in this case, either to this unhappy woman or her husband, could induce them to consent to the operation being performed. She went on, Gentlemen, in this state for several days, and it is only surprising that life lasted so long, because days and days before Mr. Grabham saw the unfortunate woman (and after she had refused to undergo this operation, which, if it had been performed when first proposed by Mr. Fairchild, she would have been living at this moment, unless carried off by other human infirmities, she appeared to be drawing nearer and nearer to her dissolution; she then became in that dreadful state, that her friends, anxious to afford her relief, if possible, were willing to resort to any means that

could hold out a hope of alleviating her misery, and some one said, "suppose we consult the new surgeon, he may perhaps be able to do something." Mr. Grabham was then called in. I will not however state any thing that took place. He thought himself justified, against the remonstrances of the husband, and against the will of the wife, to perform the operation. He thought himself justified in doing it, I say, Gentlemen; I am not here to impeach his skill, nor do I at all impeach his character or his conduct, except in the instance in question. However, he performed the operation; after he had performed it, he gave her friends no hopes of her living above half an hour or an hour at most; and he then left her until the evening of the next day. In the interim, between the operation and his second visit, there was a great effusion of blood, which induced them to think all was not right. They again sent for Mr. Fairchild to come. On the evening of the next day, when Mr. Grabham called again, he inquired whether she was dead or alive; he was told she was still living; he said, "that is more than I expected;" he then asked if "Mr. Marsh had been there," the nurse said no, but Mr. Fairchild has; he said "*Fairchild*," the nurse said, yes, Sir, Mr. Fairchild; he immediately made use of these words, "Fairchild! *A damned infamous villain, I wonder he is not ashamed to shew his head, for he has*

been killing this woman every day." These are serious words as respecting a medical man, and more serious as coming from a person in the situation of this defendant. An impeachment of the skill of this gentleman, coming from a low or ignorant person, might have had but little effect. But for one medical gentleman to tell the husband of a woman then supposed to be dying, that she had been murdered by the ignorance of another medical gentleman, my imagination cannot picture to me a more pernicious offence in the person who utters those words, or one more injurious to the person against whom they are uttered. The husband who was conscious every thing had been done by Mr. Fairchild, that either skill or humanity could suggest, and who knew that Mr. Fairchild very early in his attendance had announced that an operation ought to be performed, if the other means resorted to were not efficacious, and that he had only refrained from performing the operation, because he could not obtain the consent of these poor people; felt not a little displeased at this, and I believe he expressed that displeasure at the moment. However, there was afterwards another conversation on the subject, in which Mr. Grabham endeavoured to depreciate Mr. Fairchild as much as possible, to destroy the confidence which these persons had in him, and to destroy the confidence which any other persons might have

had in him. “Fairchild! I dare say Fairchild never saw such a thing in his life. He never walked the Hospital, or attended a Lecture, and has no right to do such a thing; but there is a set of men who come from behind the counter, right from the pestle and mortar, and amongst that class I rank Mr. Fairchild.” Now when this comes from one medical practitioner against another, and from a younger practitioner also, more recently established in the neighbourhood, I need not ask you to what motives such language as this can be ascribed; for they are very strong and very severe words. If Mr. Grabham had ever any personal quarrel with Mr. Fairchild, this was not the way in which any difference was to be settled. If ever he had met Mr. Fairchild in practice and disagreed with him, this was not the mode of shewing his resentment; but I take leave to say, he could not have met a man more entitled to respect for his professional talents, because I will shew you, that that which I last stated as coming from the lips of Mr. Grabham was all invention, for he *had* attended Lectures, he *had* walked the Hospitals, and all this assertion that he had not, is totally false; and I have gentlemen here of great eminence in the profession, whose instructions he had received. I will call to you the gentleman with whom he was first apprenticed, and another gentleman with whom he lived afterwards, and I will also call to

you a gentleman whose name and skill even at this distance from town are well known, I will also call a fellow pupil of his while he was attending the Lectures of the late Dr. Squires, and you will learn from all these gentlemen as well as from Dr. Tuthill, that they considered him a man of talents, skill and science, and they are not disposed with this young gentleman of 24 to speak of him in degrading terms, as to his conduct in this case. They will tell you that the mode of treatment he pursued, was the same that would be pursued by men of the best medical skill ; and therefore Mr. Fairchild is not a man who murdered this woman, or who ought to have been trumpeted forth in the neighbourhood of Rochford, as a person who murders his patients by his want of skill, and therefore not fit to be called in to assist any other person ; but who ought to be expelled from the neighbourhood as a pest, and as a person who, so far from curing, kills, and who in the language of Mr. Grabham, murders those who are intrusted to his care. These assertions of Mr. Grabham's spread abroad, and Mr. Fairchild, however reluctant, felt it his duty, and all men must feel with him, that he ought to bring this action and call upon Mr. Grabham to vindicate his conduct, and he has now an opportunity of justifying himself if he can. He might plead that all this was true, and if he had pleaded, it was true and made out

that plea, he would be well defended, and the plaintiff however great the injury might be, would have no right to ask a jury for compensation, because the injury he has sustained would be his own fault. But Mr. Grabham has put upon the record no justification,—he does not now say “here is an ignorant man, who never walked Hospitals or attended Lectures;” he does not now say that this was the first case of the sort that was ever under Mr. Fairchild’s management; he does not now say that he was the cause of the death of the poor woman, because she lived ten days after the operation was performed by Mr. Grabham. If he said all this on the record, and proved it, he would be well justified. But he confines himself to saying simply that he is not guilty of uttering these words. I will prove, Gentlemen, that he is; the words indicate the malice, when spoken respecting Mr. Fairchild, because he speaks in terms unfit for one gentleman to use, and more unfit for one gentleman to use against another. Well, Gentlemen, when you further consider the circumstances under which these words were uttered, you will have to say, what compensation in damages the plaintiff ought to receive. This I am sure is the only opportunity I shall have of addressing you, for my learned friend Mr. Marryatt, who will by and bye address you in as peech of considerable ingenuity, will endeavour to rescue his Client from

the situation in which his own malice has involved him, for he will, I am sure, call no witnesses either to impeach the character of the plaintiff, or to apologize for the conduct of the defendant. I challenge him to call any witness to either the one or the other. He cannot impeach my Client's character, and he stands totally without apology if he produces no witnesses; if he does not call any witnesses, you will have before you a person, who from interested motives, from personal dislike and from professional rivalry, destroys the reputation of another gentleman in his neighbourhood, and an injury which is so great, can only be compensated by damages commensurate with that injury.

Mr. Charles Latham called and examined by Mr. Chitty, proved the execution of the indentures of apprenticeship of the plaintiff, to Mr. Thomas Jackson, Surgeon and Apothecary, which indentures were dated the 5th of February, 1805.

Mr. Thomas Jackson called and examined by Mr. Chitty.

Q. Mr. Thomas Jackson, what is your business, Sir?

A. I am a Surgeon and Apothecary.

Q. I believe you are also a Man-midwife, Sir?

A. Yes, I am also a Man-midwife.

Q. Mr. Fairchild was apprentice to you, I believe?

A. Yes, he was.

Q. Did he give you satisfaction during the period he was apprenticed to you?

A. Yes, certainly.

Q. Was he diligent and attentive to you in his duties?

A. Very much so, he was very active indeed on all occasions.

*Mr. William Starr called and examined by
Mr. Chitty.*

Q. What business do you carry on, Sir?

A. I am a surgeon and apothecary.

Q. In London.

A. Yes.

Q. No. 4, Smithfield Bars?

A. Yes.

Q. Did Mr. Fairchild, the plaintiff, come to live with you at any, and what time, as an assistant?

A. Yes. He came to me between the years 1809 and 1810.

Q. In what department?

A. As assistant.

Q. How long did he continue with you?

A. As an assistant nearly two years.

Q. Did he serve you during the period that he was in that capacity, to your satisfaction?

A. Yes, certainly.

Q. Did you introduce him to any gentlemen of the faculty to receive lectures?

A. He attended the lectures of Dr. Squires.

Q. Did you know of his attending lectures?

A. Yes.

Q. On what department did Dr. Squires lecture?

A. Upon midwifery.

Q. Was Dr. Squires considered a gentleman of eminence in that department of his profession?

A. Yes, of very great eminence.

Q. Do you know Dr. Squires's hand-writing?

A. Yes, I do.

Q. Did you ever see him write?

A. Yes, I have seen him write.

Q. Will you be good enough to look at this (*putting a paper into the hands of witness,*) and tell me whether it is his hand-writing?

A. It is.

The following is a copy.

“Lying-in Charity for married Women at their own Habitations, Instituted 1757.

“These are to certify that Mr. James Fairchild hath attended my Lectures on the theory and practice of midwifery, and the diseases of children, and that during his attendance he had many op-

portunities of delivering women in difficult and dangerous cases, as well as natural labours with the happiest success, so as fully to qualify him to engage in practice.

Given under my hand,

J. SQUIRE, M.D.

Physician to the above Charity."

London, 14 March, 1812.

Cross examined by Mr. Marryatt:

Q. I believe it is not usual for gentlemen commonly to allow their assistants to attend lectures.

A. It was not while he was with me. He was introduced to the lectures of Dr. Squires after he left me, which is not an uncommon thing.

Q. Then while with you, he did not attend the lectures?

A. No, he did not.

Mr. Lynn called and examined by Mr. Gurney.

Q. We all know your name Mr. Lynn, but I must ask you for form sake whether you are a Surgeon?

A. Yes.

Q. Do you Lecture on surgery?

A. No, I do not.

Q. What hospital are you Surgeon of?

A. Of Westminster Hospital.

Q. Do you know the plaintiff, Mr. Fairchild?

A. Yes.

Q. Did he ever attend your Hospital?

A. Yes.

Q. During what period?

A. He was at our Hospital for six months, and I think he attended Mr. Carlisle's Lectures at the same time.

Q. Had you the opportunity of seeing him and knowing him?

A. Yes, I saw him repeatedly.

Q. And did his conduct meet your approbation?

A. I approved of his conduct very much while he was a pupil in our hospital.

Q. (Putting a paper into the hands of witness,) Is that a certificate of his good conduct?

A. Yes.

The following is a copy.

“Westminster Hospital.—This is to certify that Mr. James Fairchild hath *very* diligently attended the practice of this hospital from November 1st. 1811.—Entered for six months.

W. LYNN, F.R.S.

A. CARLISLE, F.R.S.”

Cross examined by Mr. Marryatt.

Q. This I believe is a printed certificate handed to all who attend?

A. Yes.

Mr. Baron Garrow. Do you mean, Sir that it is handed to all who attend, or to all who attend and *deserve* it.

A. To all who attend and deserve it, of course, my Lord.

Examination by Mr. Marryatt resumed.

Q. I see, Sir, that the word "*very*" is not inserted in the printed form, but is *written* over?

A. Yes, it is so.

Mr. Baron Garrow. Then this is not a mere matter of form ; but is a substantial certificate of that which is the fact?

A. Yes, my Lord, it is.

Mr. Carlisle called and examined by Mr. Gurney

Q. Mr. Carlisle are you a surgeon?

A. Yes.

Q. Have you known Mr. Fairchild the plaintiff?

A. Yes, I have known him in the Hospital as a pupil of mine and of Mr. Lynn's.

Q. Did he attend, Sir, to the instructions he received at the Hospital with diligence?

A. We make it a rule not to sign the certificate unless the pupil has diligently attended.

Q. Did Mr. Fairchild attend your Lectures?

A. Yes, he did.

Cross examined by Mr. Marryatt.

Q. Many courses, Sir, or only a single course?

A. I believe only a single course.

Q. Pray, Sir, how long do gentlemen attend the Hospitals before they are examined at the College of Surgeons?

A. Why now they attend twelve months.

Q. But how long used they to attend before?

A. Why before 1812 they used only to attend six months, but now they are obliged to attend twelve months.

Q. Did he attend more courses of Lectures than one?

A. Not of surgery.

Q. But of Anatomy, did he attend more courses of Lectures than one?

A. Yes, I believe he did.

Q. I believe you know he has not taken up his diploma at Surgeon's Hall?

Mr. Gurney.—In point of law that is not necessary for gentleman practising in the country.

Mr. Marryatt.—I know it is not, but I thought I would ask the question.

Re-examined by Mr. Gurney.

Q. Will you be good enough to inform his

Lordship, and the jury, whether you have any doubt as to this gentleman's competence to fulfil all the arduous duties in his profession?

A. Not the least in the world.

Mr. Marryatt. That is not suggested for a single monient, Mr. Gurney..

Mr Baron Garrow. Mr. Gurney, you should have asked in point of form whether this gentleman has, or has not, walked the Hospital in the usual way; you should have asked the last witness that question.

Mr. Lynn re-called and re-examined by Mr. Gurney.

Q. Mr. Lynn, will you be good enough to inform us, for form sake, whether Mr Fairchild walked the Hospital in the usual way?

A. He did walk the Hospital in the usual way.

Mr. Baron Garrow. Not for form sake alone, either, Mr. Gurney. He walked the Hospital no doubt. We all know what the *usual* way is, (to the witness in the box), but I presume I am to understand you, Sir, that he walked the Hospital in the usual way, only *he was more than usually attentive?*

A. Yes, my Lord, that is so.

*The examination of Mr. Carlisle continued by
Mr Gurney.*

Q. Did Mr. Fairchild walk the Hospital in the usual way, and *was he unusually attentive?*

A. Yes, *certainly.*

Q. Well, Mr. Carlisle, I am sorry to have interrupted you ; I have asked you all I think necessary, but no doubt my friend Mr. Marryatt may think it necessary to ask you some questions relative to this gentleman.

Cross examined by Mr. Marryatt.

Q. Would walking the Hospital for six months be deemed sufficient?

A. I should conceive so, if a pupil walked the Hospital as he ought to walk it during those six months.

Q. But I mean, is walking the Hospital for six months generally deemed sufficient by the faculty?

A. Yes.

Q. Now, Sir, I ask you upon your oath, and I beg you will clearly understand me before you answer my question. Do not pupils usually walk the Hospitals more than six months?

A. Yes, Sir, generally they do.

*The witness in the box examined by Mr. Baron
Garrow.*

Q. Would walking the Hospitals for six months answer the meaning of the expression, “walking the Hospitals in the usual way.”

A. If a pupil walk the Hospital, my Lord, in a *diligent way*, such as we give our certificates for, it is much more beneficial to the pupil than walking the Hospital for twelve months *in the usual way*.

*Mr. Joshua Brookes called and examined by
Mr. Chitty.*

Q. Mr. Brookes, we all know you, Mr. Brookes, but I must ask you for form sake, whether or not, you are a surgeon?

A. Yes.

Q. Do you know Mr. Fairchild?

A. Yes, I do.

Q. Did he attend any Lectures of yours upon those subjects in which we all understand you are so eminent in lecturing?

A. Yes, he did. He attended two courses of my Lectures.

Q. Upon what subject were the courses of Lectures delivered by you, upon which he attended?

A. They were upon the subjects of Anatomy, Physiology and Surgery.

Q. Did he attend those Lectures upon those Subjects, diligently and attentively, as a gentleman ought, who was studying to become a member of the faculty?

A. Yes, certainly, he was always considered by me as a sedulous student.

Q. Will you look at that paper which you have given us. Is that your certificate to that effect? (putting a paper into the hands of witness, of which the following is a copy:)

“ Theatre of Anatomy, Blenheim Street, Great Marlborough Street.

“ These are to certify that Mr. James Fairchild hath regularly and diligently attended two courses of my Lectures on Anatomy, Physiology and Surgery, dated 24th March, 1812.

JOSHUA BROOKES,

M.R.C. of Surgeons, London,

And Lecturer in Anatomy, &c.”

A. Yes, it is.

Q. Well, Sir, would that certificate have been signed by you, unless Mr. Fairchild had well deserved it?

A. Most certainly not, unless he *well* deserved it (*here the witness particularly emphasized the word “well” which the short hand writer remarks, as is usual, by putting the word in italics, on which*

the counsel or witness lays any kind of particular stress, with the intention of peculiarly distinguishing the meaning he wishes to ascribe to that special word.) I now see two gentlemen in Court, who know perfectly well, that these certificates are not obtained of me without pupils well deserving them. I see, as I said, two gentlemen now in Court who can testify the truth of my assertion on that point. One of these gentlemen, I am sorry to say, I have not had the pleasure of seeing for the last three or four years.

Cross examined by Mr. Serjeant Taddy.

Q. I think, Sir, you say, that it was necessary at the period at which the plaintiff attended this Hospital under your tuition, to attend more than six months?

A. No: it was not necessary to attend more than six months, but the plaintiff attended me more than eight months.

Q. Was it or was it not usual, Sir, to attend the Hospital much more than six months?

A. It was only necessary to attend the Hospital six months.

Q. Now I ask you, Sir, whether it was not usual to walk the Hospital for a much longer time than six months?

A. It was in a certain degree: many students

attend the Hospital for eight, or nine, or ten months, but the general multitude of country students, as soon as they are able to leave town, do so.

Q. Do not the greatest number of students attend the Hospital more than six months?

A. They do now, but they were not obliged to do so formerly.

Dr. Tuthill called and examined by Mr. Chitty.

Q. I believe, Sir, you are a Physician?

A. Yes, Sir, I am.

Q. And, I believe, you have been also in the habit of Lecturing on some branch of the profession?

A. Yes.

Q. Upon what branch.

A. Upon the practice of Physic, Chemistry, and Materia Medica.

Q. Pray was Mr. Fairchild a pupil of yours?

A. Yes, he was.

Q. Did he attend your Lectures?

A. Yes, he did.

Q. Will you look at that paper (*putting a paper into the hand of the witness*), of which the following is a copy :

“ These are to certify, that Mr. James Fairchild has diligently attended two courses of my lectures

on Pathology, and the Practice of Physic, Chemistry, and Materia Medica.

GEO. L. TUTHILL,

Cai. Coll. Camb. F. R. S.

“Soho Square, London, 18th March, 1812.”

Q. Is that your signature to that paper?

A. Yes, it is.

Q. Is that your certificate of the proper and attentive conduct of Mr. Fairchild while under your tuition?

A. Yes, it is.

Q. Now, did he attend in an adequate manner, to qualify him, as he ought to be qualified, in those departments on which you lectured?

A. Yes, he did, certainly.

The certificates were here put in and read.

Mr. Baron Garrow,—Gentlemen, it must be a matter of the highest satisfaction for you, to have heard the evidence of these great members of the faculty, as to the strict mode in which they take care to examine their pupils, before they grant their certificates of their competency to become members of the faculty; we must be all well aware that it is a matter of the last importance to know, that our health is attended to only by men who are qualified to attend in a proper manner to that arduous duty.

Mr. Joseph Jackson called and examined by Mr. Gurney.

Q. I believe, Sir, you have been an Apothecary a long time?

A. Yes, Sir, I have.

Q. Have you had occasion to know the medical skill of Mr. Fairchild?

A. Yes, Sir, I have.

Q. On more than one single occasion?

A. Yes, for more than seven years I have known him.

Q. Is he then, Sir, in your judgment, from the opportunities you have had of forming an opinion upon that subject, a person of competent skill in his profession.

Mr. Marryatt. I am sure I do not mean to impeach his skill, and I submit that is not a proper question.

Mr. Gurney. I beg your pardon, you say that instead of curing, he kills.

Mr. Baron Garrow. I will put the question. Was, he Sir, a person of sufficient skill and competence, to fulfil the duties of the profession in which he has embarked?

A. Certainly, my Lord.

Ann Kent called and examined by Mr. Gurney.

Q. In the month of April in the last year, Mrs. Kent, did you attend Mrs. Newson?

A. Yes, Sir, I did.

Q. Was she afflicted with a rupture?

A. Yes, she was.

Q. Was Mr. Fairchild called in as a Surgeon to attend her?

A. Yes, he was.

Q. Where does Mr. Fairchild live?

A. At Rochford.

Q. How long has he been a Surgeon at Rochford?

A. I cannot say exactly.

Q. Has he been there for several years?

A. Yes, he has.

Q. Do you also know Mr. Grabham?

A. Only by sight.

Q. Well, you can tell us, is he a Surgeon living in the same neighbourhood?

A. Yes, he is.

Q. How long has he been living there?

A. Not more than a twelvemonth.

Mr. Gurney Now here, my lord, is where I feel a difficulty, I propose to ask whether Mr. Fairchild used every endeavour to cure this unfortunate woman.

Mr. Baron Garrow. It is very natural that you should propose to do it.

Mr. Gurney. If I meant to be at all leading my Lord, I am sure it would not be on the present occasion.

*Examination of the witness in the Box resumed,
by Mr. Gurney.*

Q. Did Mr. Fairchild try what he could to cure this complaint in Mrs. Newson?

A. Yes, he did.

Q. He did not succeed in the applications he made I believe?

Mr. Baron Garrow. One single word need not be used that could shock or distress the most delicate feelings.

Mr. Gurney. Certainly not, my Lord.

*Examination of the witness in the box resumed by
Mr. Gurney.*

Q. Well, did these applications succeed.

A. No they did not.

Q. Upon these applications not succeeding did he mention the necessity of an operation? Was an operation propounded?

A. Yes he did.

Q. Would Mrs. Newson consent to that operation being performed

A. No, not by him.

Q. Would she consent to its being performed by any body?

A. No.

Q. Then she would not consent to its being performed by any body at all?

A. No, she would not.

Q. Did Mr. Fairchild press it day after day, and urge the necessity of it?

A. Yes he did.

Q. And she refused?

A. Yes, she refused.

Q. Did Mr. Fairchild state to both Mr. and Mrs. Newson the consequences that would result from an operation not being performed?

A. Yes.

Q. What did he state would be the consequence if an operation was not performed?

A. That she must die unless there was an operation.

Q. Did she even then consent to an operation being performed?

A. No.

Q. After some days did it occur to any of the family to call in Mr. Grabham?

A. Yes, Mr. Grabham was sent for.

Q. Had Mr. Fairchild ceased to attend at that time?

A. No, he had not.

Q. Well, when Mr. Grabham came, was Mr. Fairchild there, or was he absent?

A. He was absent.

Q. When Mr. Grabham came did he perform the operation?

A. He did.

Q. That was on Sunday the 19th of April I believe.

A. Yes it was.

Q. Was that the first day Mr. Grabham came?

A. Yes.

Q. I thought he came twice; once before that day?

A. No only on that day first.

Q. Well did Mrs. Newson consent to the operation being performed even then?

A. No.

Q. However he did perform it?

A. Yes, he did.

Q. I believe there was another Surgeon present when he performed the operation?

A. Yes, there was.

Q. Do you know who that other Surgeon was?

A. Yes, Mr. Marsh, who came with him.

Q. What directions did Mr. Grabham give respecting Mrs. Newson, after the operation was performed?

A. After the operation was performed we asked if any thing should be given to her to compose her?

Q. Well and what did he say to that ?

A. He said, no nothing, she would not live half an hour.

Q. Well did he then go away ?

A. Yes.

Q. When did he come again ?

A. On Monday night at nine o'clock.

Q. But I forgot to ask you, what time of the day was this when he left her on the Sunday ?

A. It was between ten and eleven o'clock at night.

Q. And he came again the next evening you say ?

A. Yes he came again on the Monday evening about nine o'clock.

Q. What passed then ?

A. Mr. Grabham came to the door and said, " I called to know what time she died. "

Q. What answer did you give him when he said that ?

A. I said, " she is not dead yet, Sir. "

Q. What did he then say ?

A. He said " that was more than he expected. "

Q. Did he make any enquiry as to whether any other person had been there ?

A. Yes. He asked if Mr. Marsh had been there, and I said " no, Mr. Fairchild has. "

Q. What did he say then ?

A. He said "Fairchild"! and I said "yes Sir," and then he said "*a damned infamous Villain! I wonder he is not ashamed to shew his head; for he has been killing this Woman every day.*"

Q. Well what did you then say to him?

A. I said "he cannot have killed her, Sir, for she is still living."

Q. Did he get off his horse?

A. Yes, he did.

Q. Did he go up stairs?

A. No, he did not.

Q. Did he come again the next day,—the Tuesday?

A. Yes.

Q. Well, when he came on the Tuesday with Mr. Marsh what passed then?

A. He came with Mr. Marsh and he said "well Mrs. Kent, how is she now."

Q. What did you say?

A. I said she is still living, Mr. Grabham, he said "We will see her, Mr. Marsh."

Q. What did you say to that?

A. I said, "I do not know that, Sir; I do not know whether you will be permitted to go up stairs, but I will go and see."

Q. Did you then go and tell Mr. Newson that they were there?

A. Yes, I did, Sir.

Q. And did Newson come out to them?

A. Yes, he did.

Q. What did he say then to Mr. Grabham?

A. He said to Mr. Grabham "you say that Mr. Fairchild has killed her, I think you go a nigh to kill her yourself. I count it like cutting a hog's throat, and leaving it to bleed to death as it likes."

Q. Well, what did Mr. Grabham say upon that?

A. He said "there, see, Mr. Marsh, mind what he says."

Q. Did Newson say any thing more?

A. Yes, he said "I do not care what you do with me, it won't hurt me."

Q. What did Mr. Grabham then say?

A. Mr. Grabham then said "Fairchild! *I dare say he never saw such a thing in his life; for he never walked an Hospital, or attended any Lectures and has no right to do such a thing. But there is a set of Men who come from behind the Counter right from the Pestle and Mortar, and amongst that class I rank Mr. Fairchild.*"

Q. I believe he then went up stairs and saw her?

A. Yes.

Q. Now you say that Newson said it was like cutting a hog's throat and leaving it to bleed to death as it liked. Had there been in point of fact a great effusion of blood?

A. Yes.

Q. What length of time had Mr. Grabham left her after the operation, without coming to her?

A. From the Sunday to the Tuesday evening.

Q. Had the blood gone through the bed clothes?

A. Yes, through the bed clothes, through the floor, and into the next room.

Q. How long did this poor woman live after this?

A. A week and three days.

Q. She lived, you say, ten days after the operation?

A. Yes.

Cross examined by Mr. Marryatt.

Q. When Mr. Grabham first came, Mr. Marsh was with him?

A. Not when he came the first time.

Q. Did he come down twice on the Sunday evening?

A. No, he only came once on the Sunday evening: he came before the evening on the Sunday, and the first time he came Marsh was not with him.

Q. Had he been there to inquire respecting the woman before Marsh came with him?

A. Yes, he came first to inquire and to see her.

Q. I believe it is several miles from Mr. Grabham's house to this poor woman's?

A. Yes, I believe two miles.

Q. Well, he went home after he had been to see this woman first, and when he returned to perform the operation, Mr. Marsh came with him and Mr. Marsh's son?

A. Yes.

Q. Did you assist this poor woman out of bed?

A. No, I did not.

Q. Who did help her out of bed, Mrs. Kent?

A. Mr. Marsh and Mr. Grabham.

Q. Did she at all get out of bed herself?

A. No, not the least.

Q. Was there no conversation with respect to Mr. Fairchild, and this sort of complaint?

A. No.

Q. I mean by yourself?

A. No.

Q. Were you ever present when a person by the name of Byass had performed this sort of operation on a rupture?

A. Yes.

Q. And you know that the operation performed by Mr. Byass succeeded, and that the woman on whom it was performed recovered?

A. Yes.

Q. Did you or did you not state to Mr. Grabham and Mr. Marsh, that you had stated to Mr. Fairchild, that you had assisted Mr. Byass in performing that operation, which had been successful, and you had recommended Mr. Fairchild to per-

form the operation upon Mrs. Newson, but he declined it?

A. No not that I had recommended Mr. Fairchild to perform it.

Q. Had you stated to Mr. Fairchild that you had assisted Mr. Byass in the operation performed by him?

A. Yes, because *Mr. Fairchild had pressed the operation* on her the second day after he had attended her.

Q. Did you state to Mr. Grabham that you had recommended the operation to Mr. Fairchild, but that he declined it?

A. No.

Q. Did you say so?

A. No, I did not.

Q. You mean to swear that you never said a syllable to that effect?

A. No, I never said so.

Q. Nor mentioned Mr. Byass's name?

A. Yes, I mentioned Mr. Byass's name.

Q. Did you not mention Mr. Byass's name to Mr. Grabham and Mr. Marsh, saying that you had seen an operation performed by him upon a poor woman, which operation had succeeded?

A. Yes.

Q. Now I ask you, whether you did not go on to state, that you had mentioned this to Mr. Fairchild, and urged him to perform the operation, but that he declined it?

A. That point is not agreeable to the truth, and I never said any such thing.

Q. Then you never said any thing of that kind either to Mr. Marsh or to Mr. Grabham?

A. No, not as to persuading Mr. Fairchild to do that.

Q. I ask you upon your oath once more, did you not say that you had asked him to perform the operation, but that he refused?

A. No.

Q. You never said then that he refused to do it?

A. No.

Q. You never stated then, either to Mr. Grabham or to Mr. Marsh, that you had urged Mr. Fairchild to perform the operation, but that he had hesitated to perform it?

A. No.

Q. Now then I will ask you this question upon your oath, and you will answer me truly or not as you think fit; did you or did you not tell these gentlemen, that Mr. Fairchild was desirous of performing the operation, but that Mrs. Newson refused to undergo it?

A. I said that Mr. Fairchild had recommended the operation before, but that Mrs. Newson had rejected it, and the husband had rejected it also.

Q. Then you did not tell them that Mr. Fairchild had declined doing it, though you had recommended it.

A. No.

Q. Nor did you tell them that you urged to Mr. Fairchild that you had seen Mr. Byass perform the operation successfully, and therefore you knew it was necessary for him to perform it, although he declined?

A. No, Sir, no such thing, I was only backwards and forwards, and never said any thing of the kind.

Q. You did not then, you mean to say, tell them, that you had recommended the operation to Mr. Fairchild, but that he had declined performing it?

A. No.

Q. But I believe you told them that Mr. Fairchild proposed the operation to the patient, and that she refused it?

A. Yes.

Q. Now on the next afternoon after the operation was performed, did Mr. Grabham come?

A. Yes, at 9 o'clock on the Monday evening he came alone.

Q. Pray how came he to be sent for in the first instance?

A. Why the girl was going down to Rochford, and as she was going there, she was told to call upon Mr. Grabham to say that Mrs. Newson was very ill, and to desire him to come up to see her.

Q. What time was he sent for?

A. He was sent for about 8 or 9 o'clock in the morning, but he came about 4 or 5 o'clock that evening; that was the first time of his coming.

Q. Well, how long was he gone after that before he came back again with Mr. Marsh?

A. Not long. He came back about half past 7 or 8 o'clock.

Q. How long was he there in performing the operation, and in bandaging up the part after the operation was performed?

A. I should think an hour or more.

Q. Surely more than that, because you say he came about half past 7 o'clock, and I think you say it was 11 o'clock before he went away?

A. I do not know how long it was, that he was there, exactly.

Q. He only saw *you* on the Monday evening?

A. No, not on the Monday night.

Q. You would not permit him to see the patient that evening, you know?

A. He never asked.

Q. Why what time did he call that evening, to know how she did?

A. He did not call to know how she did, but he called to know what time she died.

Q. You did not send to him in the morning of that day?

A. No.

Q. He came on horse-back you say?

A. Yes.

Q. Did he propose going in?

A. No.

Q. Nor asked to go in?

A. No.

Q. He came again the next day with Mr. Marsh, you say?

A. Yes, on the Tuesday.

Q. Do you say he got off his horse on the Monday night?

A. Yes.

Q. Why did he get off his horse then, if he did not go in?

A. I am sure I do not know, I can only say that he got off his horse, but did not go in.

Q. Were you not a little loud to him?

A. No. I do not know what you mean.

Q. You do not know what I mean?

A. No.

Q. Well then, were you not very loud and boisterous in your language to him?

A. No.

Q. He did not call you any harsh name then?

A. Yes, he did, but not that evening.

Q. He called you "a Billingsgate" you know, did he not?

A. I don't know, he might.

Q. Yes, you told him it was like cutting a hog's throat, and then leaving it to bleed to death, as it liked?

A. No, I did not.

Q. No, now I ask you upon your oath, if you did not say that it was like cutting a hog's throat, and then leaving it to bleed to death as it liked?

A. No, I did not.

Q. Nor any thing of that sort?

A. No, not me.

Q. Not you! then who did?

A. The husband.

Q. Why, when did he see Mr. Grabham?

A. On the Tuesday evening.

Q. He did not see him then, before?

A. No.

Q. Did he inquire who had been there, when this was said about the hog's throat by you, for we have taken it down as coming from yourself.

Mr. Baron Garrow.—No, Mr. Marryatt. It came from Newson the husband. What she said was this: that Newson said, “you say that Mr. Fairchild has been killing her, but I think you have gone anigh doing it; I account it like cutting a pigs” or “a hog's throat, and then leaving it to bleed to death as it likes.” That is the substance of what she says, was said by Newson; but I will give you the exact words if you like, Mr. Marryatt.

Mr. Marryatt. No, I thank your Lordship.

Cross examination of the witness in the box, resumed by Mr. Marryatt.

Q. Pray did it occur to Mr. Grabham to ask who had been there while he was away?

A. He asked me on the Monday evening if Mr. Marsh had not been there, and I told him "No, Mr. Marsh had not been there, but Mr. Fairchild had."

Q. Then I ask you whether on the Tuesday evening he did not ask whether Mr. Fairchild had been there?

A. No.

Q. Did you state at any time to Mr. Grabham that Fairchild had said "he, Mr. Grabham, had been butchering the woman?"

A. No never.

Q. That you swear?

A. Yes, I do. I have sworn it, and I will swear it again.

Q. Now mind my question. Did you state at any time to Mr. Grabham that Mr. Fairchild had said "it was butchering the woman?"

A. Never.

Q. Can you tell us what you told Mr. Grabham that Mr. Fairchild had said about it?

A. Mr. Fairchild's name was not brought up on the Tuesday.

Q. But did not you state that Mr. Fairchild had been there, and had said so?

A. No.

Q. What was it then that you said to Mr. Grabham, which induced him to call you by so harsh a name as a Billingsgate?

A. I do not know, why he called me so.

Q. Did you not tell him, and Mr. Marsh that they were either very poor, or very ignorant?

A. I do not know about poverty. These people were perfectly able to pay for what was necessary, and I said so to Mr. Grabham.

Q. Why did not Mr. Grabham go to the parish for the account?

A. I do not know.

Q. Did you not go with him?

A. No.

Q. That you are quite sure of?

A. That I am quite sure of.

Q. Were these persons in a situation to receive parochial assistance?

A. They could do without it.

Q. There was no money, however, to pay the expences.

A. I mean to say they had money of their own, and could pay their expences without the parish.

Q. But the parish did in fact assist in paying the expences?

A. I believe so.

Mr. Baron Garrow. They had money to pay the persons that they themselves chose to consult, I suppose, is that what you mean?

A. Yes, my Lord.

Mr. Gurney. You will find my Lord that the parish officers remonstrated with the gentleman.

Cross examination of the witness in the box, continued by Mr. Marryatt.

Q. Then when Mr. Marsh was there with Mr. Grabham you did not say a word about butchering?

A. No.

Q. Nor any thing about their poverty, or their ignorance?

A. I asked him what he did it for. I said he could not do it to save her life. "No," he said, "he knew that she would die." "Then, Sir," said I, "you must do it for experience." He said "No, I have seen a hundred such cases." I said then, "If you do not do it to save her life, nor for experience, *you must do it for money.*" That is what I said, Sir.

Mr. Baron Garrow. You see she is a close reasoner, Mr. Marryatt.

Mr. Marryatt. Yes, yes, my Lord, she is. She is a very good advocate on the present occasion.

Cross examination of the witness in the box, continued by Mr. Marryatt.

Q. When the part came to be exposed were there not signs of mortification?

A. I do not know about that.

A. Was there not a blackness on the skin outside before the operation?

A. No.

Q. But when they came to operate can you not tell us whether there was a mortification, or not.

A. No.

Q. You saw the operation performed, did you not?

A. Yes, but there was such a quantity of blood effused that I could not see it well.

Re-examined by Mr. Gurney.

Q. Now let us have this about the parish quite clearly. When Mr. Grabham came on the Sunday did he desire you to give him any pen, ink and paper?

A. Yes, Sir, he did.

Q. What for?

A. To write to the acting overseer?

Q. To the overseer for what parish, did he say?

A. For the parish of Hawkwell, he said.

Q. Did any body then present make any remark to him, upon that?

A. Yes, Mrs. Lurring said, "This is not Hawkwell, but Rochford."

Q. What did he say then?

A. Then he said "he could do the business himself."

Q. What did you understand him to mean by this?

A. I understood that he was going to call on the parish officer, or to write to the parish officer for permission to perform the operation.

Q. Did you, or any one else say any thing in consequence of so understanding?

A. Yes, Mrs. Lurring said Mr. Newson was well enough able to pay his own expences.

Q. Did he say any thing upon that?

A. Yes.

Q. Well what did he say?

A. He said "no indeed," the man has enough to do to pay his own expences, but he cannot pay this expence; for it is too heavy, and I shall not do it *trusting to him, unless I am on a sure foundation.*

Examined by Mr. Baron Garrow.

Q. I wish to ask you one question. Had Mr. Byass attended her before?

A. No, my Lord, he performed the operation I alluded to on another person.

*Re-examination of the witness in the box resumed
by Mr. Gurney.*

Q. The operation which **Mr. Byass** performed was an operation upon another person, was it not?

A. Yes.

Q. Where did that patient reside?

A. At Rayleigh.

*Elizabeth Lurring called and examined by
Mr. Chitty.*

Q. Did you know **Mrs. Newson**?

A. Yes, I did.

Q. Were you attending her on the 18th and 19th of April in the last year, just before the operation we have heard of was performed?

A. Yes.

Q. Did you after the operation was performed hear **Mr. Grabham** make use of any words to the last witness respecting **Mr. Fairchild**?

A. Yes.

Q. When was it?

A. On the Monday after the operation was performed.

Q. What time of the day was it; in the morning, or in the evening?

A. It was in the evening.

Q. Well, what was it?

A. He asked if **Mr. Marsh** had been there, she

said "no, but Mr. Fairchild has," "Fairchild" he says; "yes, Sir, Mr. Fairchild," says she; "that damned infamous villain," says he, "I wonder he is not ashamed to shew his head, for he has been killing this woman every day."

Q. What did Mrs. Kent say to that?

A. Mrs. Kent's answer was "he cannot have killed her Sir, for she is living now."

Q. Did any thing more pass then?

A. Nothing more that I heard.

Q. You heard nothing more pass you say?

A. No.

Q. He then went away?

A. Not directly, but I did not hear any thing more pass.

Q. Did you hear him make use of any other words at any time respecting Mr. Fairchild?

A. No, only I was present in the room the first time when Mr. Grabham came to see the patient.

Q. Well tell his Lordship and the jury what passed then.

A. When he came the first time, he went up to the patient to speak to her, and said "how do you do; how are you now?"

Q. What did Mrs. Newson say to him in reply to that question?

A. Mrs. Newson made answer and said, "very bad."

Q. Well, what further passed?

A. He laid hold of her hand and said "it was a ruptured case."

Q. He said that on laying hold of her hand, did he?

A. Yes.

Q. Well, go on?

A. I said "yes, Sir, it is, but she does not think it is of any account now."

Q. Well, did he examine her then?

A. Yes, he examined the body, and he said, "Yes it is a rupture, and it must be of great hurt to her. There must be an operation performed. Make yourself easy, Mrs. Newson, and you will soon be better."

Q. Well, did any thing further pass?

A. Yes, Sir.

Q. What was it?

A. Then, he says to me, "get me a pen and ink, and I will write to the overseer." And I said, "there is no occasion to apply to the overseer, for the husband is able to pay all his own expences, in respect of doctoring."

Q. Did he say any thing, and what, in reply to that observation of yours?

A. He said, "No, not this expence, for this will be a very heavy one, and I can not do it for him, unless I am on a sure foundation."

Q. To the Overseer of what parish, did he propose to write?

A. To the Overseer of Hawkwell parish.

Q. And did you say any thing upon that?

A. Yes, I told him it was not in Hawkwell parish, but in Rochford parish. And then the other words came.

Q. What other words did he use?

A. Why, then he said he could do the business himself.

Q. What did you consider he meant by that?

A. By what.

Q. Why, what did you collect he meant by saying he would do the business himself?

A. Why, that he meant going to the Overseer himself.

Q. Were you in the room when the operation was performed?

A. No.

Q. How near were you?

A. Only at the next door.

Mr. Gurney. That is all we ask this witness at present.

Mr. Baron Garrow. (To Mr. Marryatt.) Well, Mr. Marryatt, do you cross examine her?

Mr. Marryatt. No, my Lord.

Mary Haton called and examined by Mr. Gurney.

Q. Were you at Newson's house at the time the operation was performed on this poor woman?

A. Yes, I was.

Q. Did you, at any time hear Mr. Grabham the defendant say any thing about Mr. Fairchild?

A. No, I did not then.

Q. Then, when was it?

A. The next night. The Monday night.

Q. Was that when he called after the operation?

A. Yes, it was.

Q. Well, what did he first say then?

A. He said, he called to know what time the woman died.

Q. Was any thing said to him in answer to that inquiry?

A. Yes.

Q. By whom was any thing said in answer to that inquiry?

A. Mrs. Kent.

Q. What was it she said to him?

A. She told him that she was not dead.

Q. That who was not dead?

A. That Mrs. Newson was not dead.

Q. Well, you should use the name. What reply did he make to that?

A. He said that was more than he expected.

Q. Well, did any thing occur about Mr. Fairchild?

A. Yes.

Q. Well, what was it?

A. He asked if Mr. Marsh had been there, and Mrs. Kent told him no ; but Mr. Fairchild had.

Q. What did he say to that ?

A. He said, "Fairchild ! a damned infamous villain ; he has been killing this woman every day, and so I will tell him when I see him."

Mr. Gurney. Well, Mr. Marryatt, do you cross examine this witness.

Mr. Marryatt. No, I have no questions to ask her.

Sarah Rowland called and examined by Mr. Chitty.

Q. Were you the daughter-in-law of the deceased ?

A. Yes.

Q. Were you at Mr. Newson's house at the time the operation was performed ?

A. No, I was not.

Q. Were you present on the Tuesday ?

A. No.

Q. Were you there on the Monday ?

A. Yes.

Q. Did you see Mr. Grabham that day ?

A. Yes.

Q. What time did he come ?

A. About nine o'clock in the evening.

Q. Did he say any thing about Mr. Fairchild ?

A. Yes.

Q. What was it ?

A. He asked if Mr. Marsh had been there ; Mrs. Kent said no, but that Mr. Fairchild had been there. He then said “ He has no business here ; I wonder he is not ashamed to shew his face ; what a damned infamous villain ! he ought to be ashamed to shew his face.

Mr. Baron Garrow. Did he state why he ought to be ashamed to shew his face ?

A. Because he had never walked the Hospitals.

Mr. Baron Garrow (To Mr. Marryatt.) Well, Mr. Marryatt do you ask the witness any questions ?

Mr. Marryatt. No, my Lord.

Richard Newson called and examined by Mr. Gurney.

Q. We have understood that you applied to Mr. Fairchild to attend your wife in consequence of her illness ?

A. Yes.

Q. Did he attend her ?

A. Yes, he did.

Q. Before he used the means that were first resorted to, did he tell you, that in case they failed, it would be necessary to resort to an operation ?

A. Yes, he did.

Q. Did those means fail ?

A. Yes, they did.

Q. Did he then propose to perform any operation on your wife ?

A. Yes.

Q. Did he press it upon you and your wife ?

A. Yes, he did.

Q. Well, did Mr. Grabham afterwards come ?

A. Yes.

Q. Would she then consent to have it performed ?

A. No, she could not believe that was her complaint, and therefore would not agree to the operation.

Q. Now I will not ask you any questions to give you unnecessary pain, but, do you remember the Tuesday after the operation was performed ?

A. Yes.

Q. Did Mr. Grabham and Mr. Marsh come to your house on that day ?

A. Yes.

Q. Did you see them, and where ?

A. Yes, I met them at the door.

Q. What passed on your meeting ?

A. I had heard what had passed on the Monday night.

Q. Did you say any thing to Mr. Grabham ?

A. Yes, I said Mr. Grabham, you talk of Mr. Fairchild killing my wife.

Q. Well, what more ?

A. Then I said, I thought *he* had been in a fair way of killing her, and that it was almost like cutting a pig's throat, and leaving it to die as it could.

Q. What answer did Mr. Grabham make you to that ?

A. He said, "Mind your words" or "I shall bring an Action against you," or something to that effect.

Q. Was that all ?

A. I said very little more to him.

Q. Did he say any thing about Mr. Fairchild ?

A. Yes.

Q. What did he say about him ?

A. He said he was an infamous villain, and he wondered he was not ashamed to shew his face.

Q. Did he say why ?

A. Yes, because he had not walked the Hospitals.

Q. Did he say any thing more ?

A. Not any thing more then.

Q. You do not recollect any other expression, do you ?

A. No.

Q. You complained about this bleeding of your wife, did you not ?

A. Yes.

Q. Had the blood come through the bed ?

A. I had not seen it through the bed altogether, but it must have come through the bed, as I saw

it where it had come through the floor, and through the ceiling into the room underneath.

Cross examined by Mr. Marryatt.

Q. Now, upon this occasion, did either Mr. Grabham or Mr. Marsh inquire what Mr. Fairchild had said ?

A. No.

Q. Did they inquire whether he had been there, or not ?

A. Yes, they inquired whether he had been there.

Q. Did they inquire what he had said respecting them ?

A. No, they only asked whether he had been there.

Q. Did not one of them say, he was quite sure somebody had been there to poison your minds, or something to that effect ?

A. No.

Q. Can you not say whether any body else had said any thing about Mr. Grabham ?

A. No.

Q. Do you not know, somebody said something about Mr. Grabham's conduct ?

A. No, not that I know of.

Q. Then you know nothing more than what you have stated ?

A. No.

Mr. Gurney. That is my case, my Lord.

DEFENCE.

Mr. Marryatt now addressed the Jury in behalf of the Defendant to the effect following,

May it please your Lordship,

GENTLEMEN OF THE JURY,

IT is imputed to my Client in this case, that he has falsely, wickedly, and from a spirit of rivalry been supposed to traduce the character of Mr. Fairchild, and, my learned friend Mr. Gurney anticipated that he should not have an opportunity of again addressing himself to you, because, he said in the exercise of my discretion, I should call no witnesses either to impeach the conduct or character of Mr. Fairchild in his treatment of the poor woman in this particular case, or in any other instance, or to make any apology for the use of this language. I shall certainly call no witnesses for the purpose of impeaching Mr. Fairchild's conduct on this, or any other occasion, for Mr. Grabham has no intention of presenting his conduct in any improper light, nor do I think it likely that any of these words should have been uttered in the manner described. I do not think it is very likely that this gentleman, who exposes to public view in his

shop, the Certificates of the different persons whose Courses of Lectures he had attended, and the Certificates of the Hospitals he had walked, should have had all this said of him by Mr. Grabham; I do not think it likely, I say, that with all these Certificates staring in the face of every body who entered Mr. Fairchild's shop, that Mr. Grabham would state he had never walked an Hospital. That, therefore, must arise from the imagination of the witness, Mrs. Kent. She is a close reasoner, as you heard his Lordship very pertinently observe, for she says, that inasmuch as Mr. Grabham stated that he had seen a hundred such cases, and could not perform this operation for experience, he must do it from a temptation to pecuniary profit. It was therefore suggested to you that this Defendant was about to apply to the Overseer of the poor, and in fact, such application was made, and I believe it is no uncommon thing, especially where a disease is likely to terminate in the death of the patient, though there may be a possibility of saving life by an operation, to let the Overseers know what is in contemplation, for the double purpose of authorizing their interference to prevent it, if they think fit, and for the purpose of justifying the application afterwards, for the payment of the expences. These persons were certainly not in a situation in life to hold out much prospect of profit to a young Candidate for practice, as my Client has

been represented to be, though, I admit, that if a Gentleman is not willing to attend persons in a subordinate state of life, he is not fit to be the Medical adviser of their superiors. My Client however, is described as an ardent young man, who has lately come into the neighbourhood, and who wishes to undermine Mr. Fairchild in his practices. Let that be correctly understood. Though Mr. Grabham is a young man, he has succeeded a most respectable gentleman of considerable eminence in a long established business, and he must do that, which is no uncommon case, namely, he must work out the very large sum he gave for that succession to that gentleman's practice, as the opportunities may offer to enable him to do so; but, certainly he did not come to Rochford for the purpose of superceding any other gentleman in his business, nor could he have any object in extending that very excellent practice to which he had succeeded; however, it is meant to convey to you this impression, that Mr. Grabham said, that Mr. Fairchild was not a person of competent skill to perform this operation, because he was no Surgeon, whereas in point of fact, that was what was represented to Mr. Grabham as having been said of *him* by the Plaintiff; and it was that, and that alone, which occasioned any severe expression from the lips of Mr. Grabham, if any severe expression was used.

Now that I will undertake to prove, and I think Gentlemen, you must have already observed, that there is no trifling degree of variance in the testimony of the witnesses called for the Plaintiff. Mrs. Kent's account, she would have you believe, is most extraordinarily accurate; she speaks with the greatest distinctness, as to what she states was said on the Monday, and what she states was said on the Tuesday; she repeats the words with an accuracy, with a promptness, and with a precision, which excite in your minds, I should think, no small portion of suspicion; her evidence was given as if from a perusal of the declaration; but when we come to the third witness, she gives you the words different both in form and effect; then, when we come to the evidence of Sarah Rowland, all she says is, that Mr. Grabham said, Mr. Fairchild had no business there, for he was an infamous villain, and ought to be ashamed to shew his face; and then when his Lordship asked her, what reason was assigned why he ought to be ashamed to shew his face; she gives a reason different from what all the other witnesses give, and introduces words, which, if ever spoken at all, were spoken on the Tuesday according to the account of Mrs. Kent and Elizabeth Lurring, who never heard a word said about his not having walked the Hospital, on the Monday. Then the husband is examined for the purpose of confirming the other

witnesses, and he does not give you one half the conversation which Mrs. Kent puts into the mouth of Mr. Grabham; and with respect to what he said himself, he gives you a very different account of it to what Mrs. Kent gave you; because he says, he said “it was like cutting a pig’s throat, and letting it die as it could,” which was language very like what a man in his station of life would probably use; and then Mr. Grabham says, “mind your words, Sir,” and adds, “Mr. Fairchild is an infamous villain, and I wonder he is not ashamed to shew his face, he has never walked an Hospital.”—Therefore you will see that was the utmost extent of what was said, if even that was said; and Mrs. Kent has thought fit to give you words extremely more aggravated than any other of the witnesses. Now, whatever the fact was with respect to Mr. Fairchild’s skill, in being competent to perform this operation, which I do not for a moment doubt, it is clear that he advised an operation, but his advice was not taken; it is also clear that Mr. Grabham’s conduct in performing the operation is greatly misrepresented; for according to Mrs. Kent’s account, this poor woman was almost dragged out of bed, and the operation performed upon her without any consent on her part at all; now that is by no means the fact: for, according to the testimony of the woman Lurring, when Mr. Grabham came on the

morning of the Sunday, he stated that an operation would be necessary; and because it would be attended with expence, which he thought Newson was not in a situation to pay, he desired pen, ink, and paper, to write to the Overseer, and then he hears no one word about this woman's want of consent or concurrence; but he is simply told, that her husband is enabled to pay all Doctor's expences, and this is said to prove to you her want of consent. I do not mean now to depreciate the practice of Mr. Fairchild, I am merely shewing the circumstances under which Mr. Grabham acted, and what actually passed between him and the witness. I shall prove to you that Mr. Marsh was with the Defendant when this passed, and Mr. Marsh, and Mr. Marsh's son also were with him when he performed the operation. When he first went he did not go officiously, but because he was sent for by the husband, and the girl came down to him to desire his attendance; he went in consequence of being called, but went only, at first, to find out the complaint in order that he might apply a remedy; he found that the complaint was of the nature stated by the witnesses; he inquired how long the Hernia had been in that state in which it then was; he was informed it had been so several days; he then began to doubt whether an operation could be performed; he inquired whether an operation had been suggested,

and he was told by Mrs. Kent that she had been a nurse, that in consequence of that situation she had once seen the operation performed successfully, and that she had recommended Mr. Fairchild to perform an operation, but he declined to perform it. Now, gentlemen, I do not mean to say that this is true, but Mrs. Kent told Mr. Grabham so, though she now denies it, and I do say that Mr. Grabham had reason to believe it, from the manner in which she told him; she stated that Mr. Byass performed the operation and performed it successfully. There is sometimes a curiosity to know what Surgeon performed an operation; Mr. Grabham asked who it was; he was told it was Mr. Byass; Mr. Byass was extremely well known in the profession, and Mr. Grabham in consequence, took what Mrs. Kent told him to be entirely true. He saw the woman was in a situation of considerable danger, and thought the performance of the operation might not save her, still however there was a possibility that it might save her; and he thought it his duty as such a possibility existed, to perform the operation; because he knew that in the non-performance of it, certain death was inevitable. Still however he determined to consult a friend, and to pursue the course usually adopted by medical men, who seldom go alone to perform an operation, and he took with him a particular ac-

quaintance. Nothing can be so proper, and though I believe the practice is not so common in the country, yet it is done in London, even by the first professors, and Mr. Grabham accordingly took with him Mr. Marsh, and Mr. Marsh, junior. Now, Mrs. Kent would have you to suppose that they took the poor woman by the hand, that they helped her out of bed, without any consent on her part, and that they performed the operation almost against her will. You will find gentlemen, that she was apprized it was going to be performed hours before it was done; she saw the surgical apparatus, and all the other preparations, and it was then performed with her full concurrence, and with a considerable degree of skill. When, however, the part came to be exposed it was found that the bowel had undoubtedly mortified; and had been too long strangulated for the circulation to be restored. Certainly, at that time, these gentlemen were quite convinced that a long continuance of the unhappy woman in this world, was totally impossible. They were certain in their own minds that she could not live half an hour, and as they heard nothing from her in the course of the next day, and knew death was inevitable, they inferred that the patient was dead. Mr. Grabham, however, called the next evening and inquired, according to the testimony of the witness whether

she was living, or whether she was dead, or when she died. He was told she was still living, but he did not go in to see her, although he got off his horse. Now, unless he was prevented from seeing her, I am sure you will conceive that he would have gone up to her; because he could have no occasion to get off his horse, unless it was with a view of seeing her. He, however, did not see her on that occasion, according to the testimony of the witnesses, and he certainly had been refused, because when he came the following morning he said, "we will see the patient now." Now upon that occasion, language of the coarsest description was used to these gentlemen. I do not mean to say that any would be a complete justification for his saying that which is imputed to him, if he did say it, but certainly, any words that he did use were provoked by the party; because it will be in proof to you that though the language that was used by the husband was extremely rough, that which was stated to have come from Mr. Fairchild was much more so. I do not mean now to impute it to him, because he denies it; but a great deal of language was used to Mr. Grabham, that he had butchered this woman, which could not be the fact. He could have no reputation to establish by destroying her, though he might acquire much by restoring her. He was told, however, that he had butchered the woman, and on inquir-

ing who it was that had dared to say so, he was told by Mrs. Kent that it was Mr. Fairchild. Now I have stated before, *that I do not believe Mr. Fairchild used that language.* But I do mean to say that when Mr. Grabham thought Mr. Fairchild had made use of such observations as these “that he had murdered this woman, that he had stuck her like a pig, that he had butchered her for the sake of practice, or of money, or of experiment,” undoubtedly it was enough, considerably to provoke him. Though I am, therefore ready to concede that he was not justified in using such language as that imputed to him, and though the supposed provocation does not amount to a justification, still if you are of opinion that he uttered any such language you must see it was under such irritation as you can easily conceive would occasion it, and though that ought not perhaps to make any difference to Mr. Fairchild’s feelings, until he hears it explained; Mr. Grabham is at least willing to make the most abundant apology, and the language was not altogether so severe at the moment as Mr. Fairchild supposes.

Gentlemen, for the purpose of proving the statement I have made to you, I shall call before you both the Mr. Marsh’s, who were present at the operation. The younger Mr. Marsh was not present at the conversation alluded to; but the elder Mr. Marsh is proved by the witnesses for

the plaintiff to have gone after the operation, and the object of his visit then, was to see the patient; and for the purpose of seeing whether any thing further was necessary; but instead of gaining admittance, they are refused admittance, and language is used extremely likely to goad Mr. Grabham on to say something severe. He asks to whom he is to impute that language, and he is told, "to Mr. Fairchild." He is then represented by Mrs. Kent, to have said that Mr. Fairchild had no business there, and had no right to perform such an operation; which Mr. Newson does not remember as having been said. He, however says, Mr. Grabham said he had never walked an Hospital, or attended a Lecture, although there are these papers hanging up in his shop announcing it publicly, and by which it appears he has not only walked the Hospitals, but attended several courses of Lectures. Then it appeared that Mr. Fairchild only walked the Hospitals six months as it is stated to have been all that was requisite before 1812; Mr. Grabham certainly attended much longer; Mr. Grabham, however, could not say that Mr. Fairchild had not walked the Hospitals, or attended Lectures, because these documents, hung up to public view in his shop, preclude the idea of his having said any thing of the kind. He certainly was not justified in any thing that he has said, but at least, you must observe gentlemen, that

when he went to Newson's in the first instance to perform this operation, he is wholly silent respecting Mr. Fairchild. He inquires what has been done, and what had been proposed to be done, he receives the information, and he makes no kind of reflection or remark on Mr. Fairchild's conduct then. But, when afterwards he finds language made use of, which is imputed to Mr. Fairchild, Mr. Grabham felt somewhat irritated, and, perhaps expressed himself with too much severity. But, with respect to the conversation on the Monday, out of the three witnesses that have spoken on that subject, the first gives a material contradiction to the other two, and the last gives a contradiction to both the others. Mrs. Kent too, who is the material witness for the Plaintiff will have her evidence, most materially broken in upon by the testimony I shall adduce; because it will be proved to you, that the language which she states she never made use of before the operation, was made use of by her, and she will be proved to have used that language on the Tuesday, which she now takes upon herself to contradict having used. Therefore, Gentlemen, I trust that you will feel that an apology would be quite sufficient in a case of this sort, where the language used by Mr. Grabham, has been with reference to the representations he has heard of what Mr. Fairchild said regarding him, and not with reference to Mr. Fairchild's character or experience.

One word more, Gentlemen, and I have done. It has been thought material in this case, to call a number of Medical persons to speak to the character of Mr. Fairchild. One gentleman is the individual with whom he was apprenticed. Others are most respectable gentlemen whose Lectures and Instructions he attended to in London, and I cannot conceive the necessity of proving all these facts to the extent to which they were proved. Certainly it was neither important, nor necessary; nor can I conceive any other reason for which so many witnesses were called on that point of the case than.—

Mr. Baron Garrow here interrupted the Learned Counsel. If you had said so Mr. Marryatt, I should have heard you long ago. After all you say it was admissible.

Mr. Marryatt resumed. It certainly was admissible, my Lord; but it was only (as it would appear) for the purpose of augmenting the expences, and of creating additional Costs, which they think this gentleman is in a situation to pay.* You will judge what credit is due to Mrs. Kent, Gentle-

* It may be remarked, that these expences were endeavoured to be avoided, by a proposition made to the Defendant's Attorney by the Plaintiff's Attorney to admit these certificates, which though, in the first instance was agreed to, yet afterwards departed from by the Defendant's Attorney.

men, and what degree of provocation this gentleman received. Any thing he may have said, however to the disparagement of Mr. Fairchild, was not said to persons whose custom could be of the slightest importance, and he did not say it until he was goaded and teased on to it, under the idea that Mr. Fairchild had said these things of him, and he only said, what he did say, by way of retaliation.

Mr. Marsh Senior, called and examined by Mr. Serjeant Taddy.

Q. On the 19th of April, 1818, Mr. Marsh, did you go with Mr. Grabham to Mr. Newson's house?

A. I did. (Here it was suggested that Mr. Marsh was deaf. Mr. Serjeant Taddy spoke louder in consequence.)

Q. You went to see this operation performed?

A. I did.

Q. Were you informed what the complaint was with which the patient was afflicted?

A. Yes, I was.

Q. It was a Strangulated Hernia, I believe?

A. Yes.

Q. Was it in such a state as to require speedy attention?

A. Yes.

Q. Upon arriving at the house, who did you meet with ?

A. Upon arriving there, I went up stairs into the anti-chamber, and addressed myself to the poor woman, and asked her how long she had been labouring under that painful complaint ?

Q. Was **Mr.** Grabham present at that time ?

A. Yes.

Q. Who else was present ?

A. **Mrs.** Kent and **Mrs.** Newson's daughter.

Q. Well, what passed ?

A. I inquired if the poor woman had had any Medical attention paid to her.

Q. Whom did you ask whether she had had any medical attention paid to her ?

A. I asked both the women whether she had had any Medical assistance.

Q. What did they say ?

A. They said she had.

Q. Did they say who attended her ?

A. Yes, **Mr.** Fairchild.

Q. Did you say any thing upon that, and what ?

A. Yes, I asked if **Mr.** Fairchild knew that she had a Rupture, for some times we do not know that a patient has a Rupture unless we are told.

Q. What answer did they make ?

A. Their answer was "yes."

Q. Did they say that **Mr.** Fairchild had done any thing to it ?

A. Yes, they said that Mr. Fairchild had tried to reduce it a great many times, and had given a great deal of medicine to reduce it, but without any effect.

Q. Well, did any thing more pass ?

A. Yes.

Q. Then go on, and relate it.

A. I then asked whether, when Mr. Fairchild found he could not reduce it, he proposed an operation ?

Q. What did Mrs. Kent say to that ?

A. Mrs. Kent said, that Mr. Fairchild had not proposed it, but that she, on her part did, stating that she had seen a woman in a similar situation at Rayleigh, and Mr. Byass performed the operation on her, and she did well, and therefore why should not this woman have the same done for her.

Q. Is that what she stated she said to Mr. Fairchild ?

A. Yes.

Q. What reply, did she say, Mr. Fairchild made to that proposition ?

A. Mrs. Kent then said, that Mr. Fairchild made answer and said, that the woman was in too low a state to undergo the operation.

Q. What did you then say ?

A. I then asked if Mr. Fairchild had been there that day.

Q. What did she say ?

A. The answer was "No, he had given her up on the Saturday evening, saying, she must die, and he could do no more for her."

Q. Had you any more conversation before Mr. Grabham proceeded to the operation?

A. She further added, to what I have just said, that "on that account they had sent for Mr. Grabham."

Q. Who said that?

A. Mrs. Kent.

Q. When Mr. Grabham proceeded to perform the operation, did you assist in taking the patient out of bed?

A. Yes, and the woman assisted herself as well as she could.

Q. Was it communicated to her, that an operation was going to be performed?

A. That was communicated to her some time before, for the water was provided and the things got ready before we went, and no objection was made by any person during my being in the house.

Q. Did this conversation respecting the operation take place during the woman's presence?

A. No, that passed down stairs before we did the operation.

Q. But did the conversation respecting the operation alluded to by Mrs. Kent, take place in Mrs. Newson's presence?

A. It took place in her room.

Q. And is her room large or small?

A. The room is small.

Q. Newson is a labouring man, I think?

A. Yes.

Q. Then I suppose the house was not very large?

A. You go up to the room above through a trap door, which we were obliged to let down in order to assist in the operation.

Q. You say that the patient assisted herself as well as she was able. In what respect did she assist herself?

A. Why she made efforts to raise herself.

(Here the witness spoke in so low a tone of voice as to be inaudible to his Lordship, who interrupted him in the manner following.)

Mr. Baron Garrow. Allow me to ask you, whether you suppose I can hear a single word you say? You had better give it up, Sir, at once, if you will not speak so as to be heard.

*Examination of the witness in the box continued,
by Mr. Serjeant Taddy.*

Q. Was she placed on the table for the purpose of the operation being performed?

A. Yes, she was placed on a table in the usual way that operations are performed.

Q. Did Mr. Grabham perform it?

A. Yes, he did.

Q. Did he appear to you to perform it in a skilful manner?

A. Yes, he did.

Q. After it was performed, did you ascertain whether the bowel was in a state of mortification?

A. After he had dissected through the integuments, and before he came to the intestine, it appeared as if it had been in that state for a very long time. The intestine, when he came to it was in a state of complete mortification.

Q. Was it in such a state as to preclude all hopes of recovery?

A. Yes, though sometimes when the *Sphincter* is divided, nature will throw off the remainder

Q. Did it bleed?

A. Yes:

Q. I believe it is an operation, that is very often attended with a considerable effusion of blood?

A. Yes.

Q. Was it so in this case?

A. Yes, it was.

Q. Was there more or less than you had reason to expect?

A. No: but upon a little pressure on the artery it stopped, and it was no impediment to the operation going on.

Q. Did Mr. Grabham do all that was necessary for the safety of the patient?

A. Yes.

Q. And then went away?

A. Yes, after dressing up the wound, I stopped some time afterwards, to see what state the woman was in after the operation, and then after seeing her in a proper state, I went away.

Q. Did you go again on the Tuesday morning afterwards?

A. I did.

Q. Was that for the purpose of seeing the state the patient was in?

A. Yes.

Q. When you approached the door, how were you received?

A. When we came up to the yard gate, we were met by Newson and Mrs. Kent.

Mr. Baron Garrow. (*To the witness.*) Did you go at all on the Monday?

A. No, my Lord.

Examination resumed by Mr. Serjeant Taddy.

Q. Now when you went on the Tuesday morning, what took place?

A. I asked Newson how his wife did.

Q. What did he say to that?

A. He said none the better for us, for we had butchered and killed his wife. I then argued with him on the impropriety of such language, and he told me we should not see his wife, not even if she was well. I told him if he did not know his duty, I hoped I did, and I would see her in spite of him, and then he let us go and see her.

Q. Do you recollect what was said by Mrs. Kent about the operation?

A. Nothing was said at that time.

Q. Now let us know what further happened then?

A. I argued against Newson's conduct, and said, I should see her every day if I could, while she lived, and that he ought to be more circumspect than to use such language; his answer was, that he had nothing to lose in the case, and the most that could be done would be to take him before the Magistrate to send him to gaol, and he should live there.

Q. Did you, or Mr. Grabham inquire whether any body had been there on the Monday?

A. Yes.

Q. Now, what did they say?

A. They said that Mr. Fairchild had been there on the Monday.

Q. Was that on the Tuesday that they said so?

A. Yes.

Q. Now, what further did they say?

A. Why, after talking about the magistrates and going to gaol, I said I knew some person, or persons had been there to prejudice their minds against what had been done, and I was determined not to leave their premises until such time as I had been informed who had been there. Mrs. Kent, then, after a time, said that Mr. Fairchild had been there, and had said that Mr. Grabham and I had butchered the woman, and we must be very poor, or very needy, or we should not have done the operation, and we must have done it for the lucre of money, or for experience. I then told Newson if he thought that any thing had been done wrong by his wife, the better way would be to send to Mr. Byass, or to Billericay, or to Chelmsford, or where he liked, and if any person who understood surgery said that we had acted improperly, if he brought an action against Mr. Grabham and me, he might be compensated in perhaps the amount of 50*l.* or 100*l.* each.

Q. Was Mr. Grabham warm, and a good deal irritated at what Mrs. Kent represented Mr. Fairchild to have said?

A. Yes, he was.

Q. What did he say?

A. He said "it was a rascally thing," No, I think, indeed, I am sure, he said "it was a *darned* rascally thing for Mr. Fairchild to have let the

poor creature lie in that state, dying for want of the operation being performed, and he wondered that Mr. Fairchild was not ashamed to be seen walking up and down the streets." That was all that passed that day.

Q. Now, did he say that, when Mrs. Kent told him that Mr. Fairchild had stated what has been alluded to, with respect to him?

A. Yes.

Cross examined by Mr. Gurney.

Q. You say there was a complete mortification of the bowels?

A. Yes.

Q. That you swear?

A. Yes.

Q. Now, I ask you, Sir, upon your oath as a surgeon, did you ever know a patient live as long as this patient did, after there had been a mortification of the bowels?

A. After the sphincter has been separated nature may throw off.

Q. Yes, yes, Sir, but I ask you did you ever know an instance where after the bowels were completely mortified the patient survived, any thing like the time that this unfortunate woman survived?

A. I say only that the part of the bowels which had obtruded was mortified.

Q. And that was mortified?

A. Yes.

Q. It was in a state of complete mortification?

A. Yes.

Q. That you swear?

A. Yes, I do.

Q. Now, Sir, I ask you upon your oath, did you ever know a case of this sort, in which, after a mortification in the bowels had taken place the patient survived any thing like the time that this woman survived?

A. I never had occasion to see many of these complaints, nor do I wish.

Mr. Gurney. I have done with you, Sir.

Mr. Baron Garrow. (*To the witness in the box.*)

Q. Would the removal of the *sphincter* remove the complete mortification of any part?

A. The removal of the sphincter might operate in this way that nature—

Mr. Baron Garrow. (*To the witness in the box.*) Now, pray favour me with an answer to my question. Would that restore the mortified part?

A. No, my Lord, but it will sometimes bring on an artificial evacuation.

Q. Did you ever know an instance of that sort where the intestine was mortified?

A. I know a case where it broke of itself and formed an artificial aperture.

Mr. Baron Garrow. Very well, Sir, you may go down.

*Mr. Thomas Marsh junior, called and examined
by Mr. Bowen.*

Q. Are you a Surgeon, Sir?

A. I am, with my Father.

Q. Did you attend this operation in company with your Father and Mr. Grabham?

A. Yes, I did.

Q. Did you go up stairs with them?

A. Yes.

Q. Will you be good enough to state what passed when you went up stairs? First, though, who were there?

A. Mrs. Kent, Mrs. Newson, and her daughter.

Q. Well, now tell us what passed?

A. My Father asked Mrs. Kent how long Mrs. Newson had been labouring under that disease, and she said nine or ten, or eleven days.

Q. Well, what then?

A. She was then asked whether Mr. Fairchild had ever proposed to perform an operation, and she replied "No;" but that in consequence of having once seen one performed successfully by Mr. Byass, she proposed an operation to Mr. Fairchild, but Mr. Fairchild's reply was that Mrs. Newson was in too weak a state to undergo the operation.

Q. Were any preparations made when you got there, for the operation to be performed?

A. Yes, the warm water, and every thing was prepared when we got there.

Q. Did your Father then ask any thing about Mr. Fairchild ?

A. No, not that I recollect.

Q. What further passed then before the operation was performed, you did not hear ?

A. No.

Q. We are told this room was small, is that so ?

A. Yes it is.

Q. When the operation was about to be performed, who assisted Mrs. Newson out of bed ?

A. My Father and I, and she assisted herself as well as she could.

Q. I suppose the operation was performed in the usual way ?

A. Yes.

Q. Did she make any request ?

A. She requested us to be as quick as possible.

Q. Well, state what appearance the Rupture had ?

A. When the Intestine was exposed, it was of a very dark colour.

Q. Do you mean by a dark colour. it was in a state of mortification ?

A. Yes, I do, it was in a state of mortification.

Q. Was only the strangulated part mortified, or had the mortification proceeded to any further extent ?

A. Only the strangulated part had mortified.

Q. When the operation was performed, was there any particular effusion of blood?

A. No, there was a little from the artery, which stopped immediately after the finger was put upon the artery.

Q. I believe you were not with your Father or Mr. Grabham when they went there on the Tuesday morning?

A. No.

Mr. Marryatt. Do you cross examine this witness.

Mr. Gurney. No, no, we shall ask him no questions.

Mr. Marryatt. Then that is my case, my Lord.

REPLY.

Mr. Gurney replied in the manner following :

Gentlemen,

I am sure I spoke most sincerely when I said that I did not expect an opportunity of addressing you again, and I certainly do think, that the evidence my learned friend has offered, has not very much improved his case, because the contradiction which he offers to the evidence of my witnesses; comes out of the mouth of a person who I

think has let the secret out, so far, as regards both himself and Mr. Grabham. They had discovered that there had been a most dreadful hæmorrhage from this patient, which they well knew ought not to have taken place, because, in the cutting through the integuments of that part, no artery ought to have been wounded, and if the artery had been accidentally wounded, it ought to have been taken up, from which Mr. Grabham had become afraid, that Newson would bring an action against them for some supposed unskilfulness, and his complaint of their conduct towards this poor woman is made the ground work of the depreciation of Mr. Fairchild's character, and, to be sure, for the purpose of contradicting the witnesses whom I have called, respecting the conversation of the Tuesday, Mr. Marsh is put into the box. And that gentleman, who for the purpose of hearing every question put to him, was obliged to make an artificial trumpet for his ear, with his hand, pretends to have heard that, which neither Mrs. Kent or Newson heard. But, Gentlemen, even Mr. Marsh gives me a most important confirmation as to the language which Mr. Grabham used, for even he, admits that his friend said "it was a damned rascally thing to let the poor woman be in that way without performing the operation, and he wondered that he was not ashamed to be seen walking the open streets;" language, which, allow me to remark, implies no

small degree of hatred, and is not to be apologized for by any pretence of Mr. Fairchild's having said that which never had been said ; and I will not believe Mr. Marsh, when he says, that Mrs. Kent told him Mr. Fairchild had said this, because the woman has denied it, and it is a very unfortunate and lame excuse. My learned friend says, he has no intention of depreciating the character of my Client. Has he not ? then he is very unlike his Client, for I will shew you that he had not the provocation he pretends he had. When did he say this, according to the account of Mr. Marsh ? on the Tuesday morning. He is then told Mr. Fairchild had said something to his disparagement. Had he so ? then what provocation was there for what he said on the Monday night ? This is a curious sort of defence, and what he said on the Tuesday forenoon, I suppose, was by way of qualifying what he said on Monday evening. He says, " Mr. Fairchild never saw such a thing in his life. He never walked an Hospital, he never attended a Lecture, and has no right to do such a thing ; but there are some men, who come from behind the Counter, right from the Pestle and Mortar, and among that class I rank Mr. Fairchild." This could not be the language of Tuesday, according to Mr. Marsh ; but then we have what is produced as a contradiction to the woman, Kent, and which is most unprovoked and unwarrantable, though it,

or something like it, is alleged by Mr. Marsh to have been said on the Tuesday, that "Mr. Fairchild is a damned infamous villain, he ought to be ashamed to shew his head, for he has been killing this woman every day." This is the language of Monday night, as proved by Mrs. Kent, by Mrs. Lurring, by Mrs. Haton, and by Mrs. Rowland, and my learned friend makes an artful attempt to shake the testimony of Mrs. Kent, by stating that the other witnesses did not state the words in the precise same manner as she had stated them ; but he did not succeed in his attempt, I am sure ; because that shews her to be the witness of truth, and gives more confirmation and strength to her testimony. When you find witnesses all sticking to the same words and phrases, then indeed, you may suppose they are not telling the truth, but such trifling differences as those alluded to by my learned friend confirm and strengthen a witness, rather than diminish from the credit that is due to her testimony. But I would ask you, gentlemen, whether you ever saw any person in that condition and station in life, who answered the questions put to her more artlessly, more promptly, or more plainly. But let us look how the transaction really stands, Mr. Marsh is as deeply involved in it as Mr. Grabham ; they are of one party, they act together, Mr. Fairchild was to be completely run down, and that is the whole

secret of this transaction. For that purpose as gross ignorance is imputed to him, as can be imputed to any man; he is actually accused of murdering the wife to the husband's face, according to Mr. Marsh, who if he believed the charge, would from the emotions of nature, have been likely to take instant vengeance on him. This accusation too, is proved to have been made, by the evidence of the daughter-in law, of the nurse and of the friends, though not in the husband's presence. I do confess it appears to me, and I think there can be very little doubt, that there was some consciousness on the part of Mr. Grabham, that his conduct towards this poor woman would be looked into, when they find Mr. Fairchild had been to visit her after the operation had been performed; and they did not wish that Mr. Fairchild should know they had left her with the artery bleeding, and the blood running through the bed. Therefore a vindictive feeling is felt towards him, and these scandalous and infamous assertions are made respecting his unspotted reputation.

Gentlemen, I leave the case of the plaintiff in your hands. It is not denied that I am entitled to a verdict, and the only question is, what damages my Client ought to receive. It is said that the defendant has come there and succeeded to another gentleman's practice, by paying a

premium which he is to work out of my client as opportunities may offer. You, gentlemen, will teach him by your verdict, that he is not to reimburse himself by working my client out of Rochford!; nor is he to destroy his character for the purpose of erecting himself on its ruins. An injury has been inflicted as great as can by possibility be sustained, and the compensation you give, ought to be adequate to it.

CHARGE.

Mr. Baron Garrow charged the Jury in the manner following,

GENTLEMEN OF THE JURY,

OF all the counties in England to which my practice at the bar has led me, this I think, has always had the honour of being attended at its Assizes by more persons of consideration, of rank, of character, of honour and of fortune, as Special Jurors than any other, and that which in my more early experience I observed with pleasure, has not I perceive ceased; but, on the contrary, the gentlemen whom I now see in that box, present to me a continuance of that very laudable practice. I am the more happy that it should be so, on the

present occasion, because this is a case in which above all others, that superiority of judgment and that gentlemanly feeling, for which, from your rank in life you are more eminent, are requisite. I now have the honour of addressing men of cultivated understanding, and refined educations, who are able to appreciate the value of character to others, when they imagine for a moment the loss of or damage to their own.

The Plaintiff in this case, Mr. Fairchild, is a member of a most honourable, learned, and liberal profession, and he complains that the Defendant who is a gentleman in the same walk of life, has taken advantage of an unfortunate circumstance to make use of expressions, which it is admitted, would lay the foundation of the present action. It is quite unnecessary that I should trouble gentlemen of your understanding, with any observations at length on the nature of such a case, and I suppose, it is unnecessary to recapitulate the whole of the evidence. If, however, there are any particular parts which you wish read, I will refer to them.

Here the Jury intimated to his Lordship, that they did not wish the evidence to be read.

Mr. Baron Garrow resumed. Well, gentlemen, then the case is shortly this. This gentleman, Mr. Fairchild, who is a person properly and

regularly educated, and of competent skill, has been called in to assist a patient, with regard to whom, but one mode could have any substantial effect, but which remedy could not be applied without her consent. You have heard, gentlemen, that the Plaintiff informed her of the state in which she was, and not only proposed the operation, but earnestly urged it both to her and her husband, in order that he might be permitted to perform it; but the poor creature, persuading herself that her complaint was not of the nature represented, peremptorily and positively refused to undergo it. In this state of things, and when the disorder had advanced to a very inconsistent height for any attempt to be made to relieve the patient, the present Defendant was called in. One cannot help regretting that the course which is usually proceeded in, I believe by Medical gentlemen was not adopted on the present occasion, and that this gentleman had not desired to meet the former practitioner in consultation, to ascertain what had been done, what had proved ineffectual, and in short to be fully apprized of the previous state and treatment of the patient. I cannot help regretting, I say, that Mr. Grabham did not pursue that course. He is, however, attended by the two Mr. Marsh's; he proceeds to the house of this unfortunate woman, the operation is performed, and he leaves the sick chamber

predicting that, probably, half an hour was the only remaining span of her life. In the course of that night, and the next day, we find that such an alarming and dreadful hæmorrhage had taken place, as to have penetrated through the bed, through the floor of the bed-room, and through the ceiling of the room below. It is a part of the circumstances of this case, that a considerable length of time elapsed before any inquiry was made, and no inquiry is made by those who had taken charge of this patient, until the visit of Monday evening. And then Mr. Grabham does not call to know what relief could be afforded, but to know at what period his prophecy of the Sunday evening had been accomplished ; and to use his own words to inquire “ *at what hour did she die !* ” That is what one would *not* have expected ; however, it is upon this occasion that the Defendant asks whether Mr. Marsh had been there ? For what purpose should he have been there ? The only purpose he could have, according to his previous judgment, would be to inquire at what period she had died. Mr. Marsh could have no expectation of her living. Then upon his being told that Mr. Marsh had not been there, but that Mr. Fairchild had, he makes use of these injurious expressions with respect to him, which have been repeated to you. Now, supposing the representation of Mr. Marsh to be true, and that that which we hear from

the other witnesses passed on the Monday, passed on the Tuesday, still, that would be no justification, and the expressions the afflicted husband had made use of were clearly on the Tuesday, and not on the Monday, therefore that can be no excuse for what is said on the Monday by Mr. Fairchild. This poor man is told that Mr. Fairchild has neglected his duty, and referring evidently to what had been said on the Monday, he says, "you say Mr. Fairchild has been killing my wife. I think you are going anigh to do it," and then he uses that expression, which is only to be apologized for by the afflicted state of his mind, and his low situation in life; he compares her, from the dreadful state in which she was, to a destroyed and dying animal, who is left to perish as it pleases, and which I need not repeat to you. Now, if Mr. Fairchild had used opprobrious expressions, and upon the evidence, I do not think he did, nor indeed, is it pretended that he did, Mr. Grabham might have retaliated by saying, "I do not think his conduct in delaying the operation was quite right," but where do you find an apology for this "I wonder he dare shew his head in the streets. He never walked an Hospital, he never attended any Lectures, but there is a set of men who come from behind the counter, right from the pestle and mortar, and amongst that class I rank Mr. Fairchild." This turns out to be all invention, and

you will consider whether an invention of this kind could be made for any other purpose, than to do that, which it was calculated to do, namely, to ruin and undo this man, and gentleman. I was most happy to hear the account given to you by the very eminent men, who have been this day called to you as to the course they pursue in giving their certificates to pupils. A notion has I believe been prevalent that they are given as a matter of form, and it is most satisfactory to learn that, that is not the case; because the public should know, when in a situation of peril, in whose hands they may safely repose their lives, and not be liable to place their safety in the hands of an ignorant pretender, who can never cure them, but can alone subject them to almost inevitable destruction. I will not trouble you, gentlemen, with any further observations, I have rather abstained from making observations more than I should otherwise do, knowing your excellent understandings, will guide you. I leave it to you as a case, in which I think the Plaintiff is entitled to a fair compensation, for a grievous injury; and I know you will temper your compensation to him by moderation and by prudence.

Your verdict so tempered will be such as will give satisfaction to you, and to those who shall hear that verdict.

Here the Jury consulted for a short time, after which, their verdict was taken in the following form.

Mr. Hughes the Associate. Gentlemen of the Jury, are you agreed in your Verdict. Do you find for the Plaintiff, or for the Defendant?

The Foreman of the Jury. For the Plaintiff, damages 250 Guineas.

FINIS.



